

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTSCASE NO. CR05-30042United States of AmericaPLAINTIFFAndrew LellingSharon KearneyRicardo DiazCesar CruzDEFENDANTTerry NagelJoseph FrancoCOUNSEL FOR PLAINTIFFCOUNSEL FOR DEFENDANTJUDGE WolfCLERK O'LearyREPORTER RomanowCLERK'S NOTES

DATES:	Jury Trial - Day 3
9/26/06	Court goes over preliminary matters with the parties concerning the disclosures made by the government this morning. Court has reviewed in camera documents that the government does not intend to disclose. Court orders the government to disclose the in camera documents to the defendants and requires the government to stipulate that there was no required report of the payment to Rios on 3/30/05. Court will give a limiting instruction to the jury regarding the recordings related to the 3/30/05 transaction between Rios and Diaz as to Cruz. Court will recess for one hour to allow defense counsel to review the disclosed documents. Government ordered to provide the clerk with a copy of the letters and documents it provided to the court earlier this morning. Jury brought in and the court explains the reason for the delay this morning. Court recesses until 10:45. Court resumes. Defendants request that the court recess until tomorrow morning so that they may review the documents and decide whether to request a mistrial. Court takes a brief recess to allow defense counsel confer with their clients. Defendants move for a mistrial based on the prejudicial joinder and delayed disclosure. Government will not oppose the motion for mistrial but does request that the court find that the basis is for the joinder and not as a result of government misconduct. Court conducts colloquy of the defendants after they are sworn in by the clerk. Court allows both of the defendants' request for a mistrial. Court brings the jury and discharges them from their duty. Court resumes with just the parties. Written order will issue granting the defendants' request for a mistrial. Parties shall by 10/6/06 confer and report whether they have reached any agreement, if not which counts will go forward at the next trial. Further pre-trial conference will be held on 10/17/06 at 9:30 am. Tentative trial date set for 11/13/2006. Defendants' released on original conditions. Court with agreement of the parties excludes all time between today's date and 10/17/06.